

Diversity Update

Co-presented by California Lawyer and California Minority Counsel Program

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Is there a business case for diversity? How can you increase diversity in law firms and corporate legal departments? This issue launches our first annual diversity roundtable. Find out what our eight panelists, including both outside counsel and corporate counsel, have to say. They are Jim Colopy of Farella, Braun + Martel, and his guest Henry C. Fong of Gap Inc.; Nancy J. Geenen of Foley & Lardner LLP and her guest Susan L. Uecker of Uecker & Associates, Inc.; Garner Weng of Hanson, Bridgett, Marcus, Vlahos & Rudy and his guest Guy Rounsaville of Visa International; and Joan Haratani of Shook, Hardy & Bacon and her guest Gordon Yamate of Knight Ridder. Our roundtable was moderated by California Minority Counsel Program (CMCP) Executive Director Tania Shah Narang, who directed questions to corporate counsel, and Custom Publishing Editor Chuleenan Svetvilas, who directed questions to outside counsel, and reported for Barkley Court Reporters by Sandra Lehane.

At Visa International, we get below a firm's marketing material and look exactly at how they staff, how they give credit, who comes to meetings, and who's going to be assigned to a particular matter. When you start talking to the minority partners and associates, you get a feel as to whether the firms really have a culture that has embraced diversity or if they are doing it just for show.

Two firms that we did not use before I joined Visa International are Garner's firm, Hanson Bridgett, and Lord, Bissell & Brook. They were selected because of individuals who were committed to diversity and the commitment those firms have shown in support of diversity. Both firms have done a great job.

FONG: Gap, Banana Republic, and Old Navy have an extremely diverse customer base, and we have a work force that reflects that customer base, including a very diverse law department. As a result, diversity is a key consideration when we assess and hire outside counsel. We examine not only the firm's pool of associates but also the diversity of its senior attorneys and its partners, to see whether

diverse attorneys are given meaningful opportunities to develop and succeed.

We're looking for firms that are not just talking the talk but also walking the walk. Plus, we find that we tend to get more fresh, smart, innovative, and creative legal solutions from firms that fully embrace diversity.

YAMATE: Diversity is one of our core values, but also it makes good business sense. As a newspaper company, our franchise is our credibility in each of the local communities that we serve. How do you gain that credibility, how do you communicate with them unless you can reflect and represent what that community is? The ethnic diversity is different for each of our newspapers depending on each local community. Our bonuses are based on our incremental improvement in bringing people of color and women up to senior management levels.

In choosing outside counsel, diversity is an important factor, but it isn't the only factor or the top factor. We look at a variety of things—experience, expertise, ability to communicate to management, and cost effectiveness.

CMCP: How important is diversity in your decision when you hire outside counsel?

ROUNSAVILLE: I'm very satisfied that the firms that we look at are competent, responsive, and cost-effective when they provide services. To differentiate among them, the key criterion that I examine is diversity. This comes from being involved in the California Minority Counsel Program and being convinced that diversity must be a top priority if we are going to make our profession truly inclusive.

UECKER: For me, diversity is not the primary decision in hiring outside counsel. I work in a field that's in constant chaos—bankruptcy—so a lawyer's availability and ability to respond in a very short time period is really important to me.

A lot of the partners I work with are not of color but they bring in folks who are. We create a relationship with associates who are moving up and, hopefully, one day will be partners who I can have a continued relationship with.

MODERATOR: Many of you have diversity committees, minority law student scholarships, and recruiting in place. Can you discuss one of your firm's diversity initiatives?

WENG: We have so many initiatives, but I'll mention one that may be less typical. We try to make Visa International so happy with our work that it doesn't know what to do with itself. Now that's not different than how we treat every client, but I'll tell you why that's a diversity initiative.

First, Visa International is a leader in pushing diversity within outside counsel. It and other companies believe they can find great minority attorneys, so they try out firms with whom they have not previously worked because of those firms' diversity efforts. When we do great work, we prove them right. We show that pushing diversity is paying dividends. Second, the more work we do for diversity-focused companies like Visa International, the more my partners notice. And our strong support for diversity gets even stronger.

Beyond that, I'll mention that you must have strong commitment from the top—from management. Most firms can come up with initiatives that sound good. But it takes strong leadership to execute.

HARATANI: Within Shook, Hardy & Bacon, we try to include a member of the diversity committee on each top management committee so the dialogue can be maintained at that high level. I firmly believe that the push for diversity and inclusion comes from the top down, that you need true leadership on that issue, and that you need to keep the conversation going.

Presently what I'm very excited about is an SHB program called Diversity Dialogue, which one of our white male associates helped create as part of the NAACP dialogue on diversity. It was adopted by the Clinton White House.

In my many years practicing law and being in majority, private firms, I have found that the most effective way to initiate change is by using a one-on-one approach. It's that work that causes people to look down deep in their souls and examine their own biases. And we all have biases.

The Diversity Dialogue recognizes that change comes slowly from a targeted one-on-one relationship. Through considered conversation, attorneys are challenged about their underlying attitudes and beliefs. We've rolled the program out to our second- and fifth-year associates in several of our offices.

The associates see *The Essential Blue Eyes*, a film based on the work of Jane Elliot, a third-grade teacher who did an experiment in which she randomly discriminated against kids with blue eyes one day and then kids with brown eyes another day. In the documentary, adult volunteers signed up for a similar exercise, fully aware that they would be discriminated against because of their eye color. Nevertheless, several times, many were reduced to tears because of the unfair treatment. When you engage folks in a healthy, non-judgmental dialogue about prejudice, interesting attitudes and perceptions bubble up. You can then start to have a meaningful conversation.

COLOPY: Our diversity task force is co-chaired by a partner—I am the partner—and an associate, and is comprised of many attorneys from senior partners to junior associates as well as staff. Our task force has been an active and aggressive agent of change in the firm on many fronts.

One example is our annual diversity workshop focused on increasing awareness and discussion of diversity issues internally. Last year the workshop focused on gay and lesbian attorneys. To prepare for those workshops, we do extensive interviews of former and current Farella attorneys to get a sense of what people are thinking about the issue. The workshop deals with the most pressing and cutting-edge issues, and is specific to our firm.

Every year, going into a workshop, we'll hear some attorneys saying, "Oh, this is yet another administrative obligation that I don't have time for." But then every year after the workshop, people unanimously say it was a wonderful opportunity to have the discussion and they really learned and benefited from it. We also have an established follow-up process for the great ideas that arise during the workshop.

GEENEN: Foley has its national focus—because I come from a firm of 1,000 attorneys—and then we have the local focus. Here in San Francisco, we're probably just under 100 employees. The local goals are a lot easier to improve. In San Francisco we take our Midwest ethics and overlay that with "California cool."

Foley is creating a matrix where we measure the success of our diversity initiatives. For

example, if we've won work through beauty contests, we ask, have those diverse attorneys stayed on the case? Were those diverse attorneys getting challenging work and client contact? Getting a benchmark in the first instance and then, from that benchmark, Foley's goal going forward is saying, here is where we want to be in six months, and in three years. We all need to improve, and it's never enough.

In a 12-month period or on a case-by-case analysis, we want to go back to our client and measure ourselves and say, "Here's how we think we did. What do you think? What did you see? Where do you think we can improve?"

Each of the office managing partners is charged with the task of creating a diversity program for their office. Each of the department chairs in litigation, business, IP, regulatory, health, tax, is charged with creating a diversity program within the department and within the practice groups. And we're held accountable. A portion of my compensation depends on the goals I articulated and then my implementation and achievement of those goals.

ROUNSAVILLE: I've heard a lot about how things are done differently today than were done 15 years ago when the California Minority Counsel Program began. And that's very gratifying and comforting. But when I hear about all the things that corporations and law firms are doing to support and further diversity in the legal profession, I would expect to see a much different picture than I think exists today. I would expect to see many more minorities in senior positions in both outside firms and corporate law departments.

Also, when I talk to minority and women partners and associates, I would expect to hear a much more positive attitude. In reality, I see a legal landscape that is quite similar to what existed when the California Minority Counsel Program was established in 1989. I hear a lot of the same concerns and frustrations that I heard 15 years ago.

I haven't recently looked at the statistics of women and minority partners in California firms today, but I'll bet it's not that much different than it was in 1989. The percentage of minority partners and associates do not align with the efforts and programs that we're talking about today. One would think, and hope, we'd have made a lot more progress. I don't know why we haven't.

COLOPY: Increasing the diversity in the higher ranks of law firms is one of the most formidable struggles that the legal profession has had and will continue to have. In July, the *Daily*

Journal published its annual chart of the 50 largest law firms in California. The chart included the number of diverse partners and the number of women partners in each firm.

We analyzed these numbers to see how our firm fared and to get a sense of the legal market. The average percentage of female partners of these 50 law firms was 19.3 percent, and ranged between a high of 38.8 percent and a low of 9.9 percent. For minority partners, the average was 7.8 percent. There were law firms that had zero minority partners. The highest percentage was only 16.5.

Long-term success of diversity requires not only having support of the leadership of the firm, but also having diversity in the leadership of the firm. We now have more diverse law schools than we did 15 years ago, but it takes a long time for people to work themselves through a law-firm partnership. They need mentors at the top, and they need to see diverse partners who they can look to for inspiration. I suspect that is a significant reason why diverse associates may not stay the path. They don't have the same type of mentoring relationships that other attorneys do.

WENG: Law-firm retention is hard enough, and it's harder with minorities. Five years out, you lose 53 percent of law-firm attorneys. It's 65 to 70 percent for minority attorneys, and you're losing that from a smaller number—so you feel it disproportionately. One of our approaches to retention and to mentoring has been to build role models.

We develop leaders. Our partnership is over 10 percent minority. On our Management Committee, three out of seven people are minorities. I'm on the Management Committee as a seven-year attorney. And in a firm of 110 to 120 attorneys, two of our practice groups are led by minorities. Our minority attorneys can see their path going up.

UECKER: I haven't seen many of my associate minority folks become partners. It's a very slow process, and a lot of folks bail after a while. They just leave; they are not willing to wait.

HARATANI: Mentoring is critically important. When I look back on my mentors when I started practicing law, they were white men. They embraced me and taught me how to survive and thrive in the litigation culture. It's very counter-intuitive and counter-cultural for me to be successful as a litigator.

The message I would like to impart to both associates and law firms is that the mentor doesn't have to look just like you. The mentor has

to be somebody who is personally committed to your growth and your development and who will help you along. Every time you stumble, they will be there to help you up. Because you will stumble. And it is a very hard row to hoe to become a litigation partner and litigation associate.

FONG: The legal profession has made strides in recruiting and hiring women and minorities, but it hasn't done enough to retain, develop, and promote them. People mistakenly think that with time, things will be fixed. We tell ourselves that we can just keep attracting and hiring diverse attorneys, and 10 years from now, they will have trickled into managing partnership and other leadership roles. But we said that 10 years ago, and it still isn't the case.

Only 14 percent of general counsel of Fortune 500 companies are women. Only 5 percent of managing partners of major law firms are women. It's not happening at the rate that we would like it to happen. We need diverse attorneys in leadership positions sooner rather than later.

GEENEN: I would like diversity not to be a zero sum game. It's not good if I go recruit Joan from her law firm; it's not good if Guy recruits Joan as in-house counsel. So we have a challenge at the lateral-partner level. If we keep recruiting from each other, we're not doing any better. How do we increase the numbers in diversity for all of us as a community? We need to focus on retention of diverse attorneys and on re-entry programs for diverse attorneys who have left practice for a period of time.

The corporations are far ahead of the law firms in the diversity program. They recruited early and have talented diverse attorneys coming up to leadership positions. Our GCs say, "We recruited many of your best people so we could launch our diversity programs." Now GCs are asking the law firms to achieve similar results.

ROUNSAVILLE: I recently reviewed a survey about what corporate clients look for in outside law firms. The survey ranked the most important characteristics of a law firm if it were selected to provide legal services. What surprised and disturbed me was there was no mention of diversity being a consideration in how law firms were evaluated and selected.

Even within our group here, which is supportive and sensitive to issues relating to diversity, it appears that there are differences on how important diversity is when it comes to the selection of our law firms.

Speaking for myself, if we are really serious about changing our profession, we have to

hold the law firms we retain more accountable when it comes to their diversity efforts. As clients, we must drive the diversity initiative and demand that firms we retain have minority and women partners.

HARATANI: If you look at a law firm's structure, the very top of the pyramid is the client. So when the client asks for something, the lawyers and the law firm hear that message loud and clear, and they respond.

For example, I was involved in two beauty contests recently where diversity was the number one consideration. When a corporate client asks you to attend a beauty contest for a significant piece of work and they tell you diversity is a huge factor in whether or not you are rewarded that business, that gets a dialogue going all throughout the offices in a very healthy, productive way. It was very exciting to be a part of two beauty contest pitches in which we were successful, where diversity was foremost and talked about, lauded, and valued.

CMCP: According to a Catalyst publication, Shell Oil's legal department requires outside law firms to include the race and gender of each attorney who works on their matters on their bills. Do you have any similar requirement?

FONG: I work very closely with all of the law firms that I hire, so I know their diversity figures without having them listed on their bills. Still, it's something to explore as a carrot-and-stick approach to helping firms along in their diversity efforts.

YAMATE: We don't require those. Like Henry, I do know a lot of the attorneys who work on particular matters, and you get to know who they are and recognize whether or not there is some level of diversity on the team and within the firm.

UECKER: I really know the attorneys I work with, and all the bills have the name and amount and what they do. So it's not really necessary.

ROUNSAVILLE: At Wells Fargo, we required outside counsel to include that information. It was a very good tool. It brings home to the person who is submitting the bill, "I've got to put down something here, and that something better be something that pleases my client." It does send a message.

When I joined Visa International, we were just getting started with our diversity programs, both as a company as well as within the legal department. As the diversity programs mature,

we are adding different tools to make the programs more robust. One tool that will be added in the very near future is a requirement that our law firms provide us with those statistics. We are also going to make sure that the law firms account for not only who performs the work, but who gets credit for the work.

WENG: Guy sent our firm a letter saying he was about to start doing this. My reaction? I thought it was the greatest thing in the world. Our firm is on the right track and has a supportive environment; but we still need to be kept on our toes. And it's a whole different thing to understand that you'll have a numerical report card every month. It's a great carrot and stick for law firms. Plus, it makes sure that diverse attorneys aren't just paraded out front for client pitches; they also work on the matters for these important clients.

ROUNSAVILLE: I don't know how many times I've had people call me and thank me for putting that "burden" on the firm. They say, "I just wish more corporations would do this because it would help us move our firm faster down the path of inclusiveness if it did happen." It does keep a spotlight on these issues every month.

But many corporations, for whatever reason, don't demand this information. It's a very simple thing; however I acknowledge it isn't something everybody embraces, even when Wells Fargo did it, and even within Visa International. Some feel it's intrusive and that it is an unnecessary administrative burden. However, I feel it is like a report card each month concerning a very important subject. We're dealing with people who are very high achievers. They don't like to get a bad grade, and I believe it does help to keep people focused on the issue of diversity.

COLOPY: There are two sides to this coin. One side is to have a program telling outside counsel that diversity is a priority for the corporate client. The flip side is to make sure that that feedback from the company, both good and bad, is conveyed back to the firm. Everyone recognizes that diversity is an important business value if we were to lose a potential matter from a multinational corporation because they did not believe that we were diverse enough.

The other side, which I really like to see, is when the clients do send us a matter because in all the other criteria, we matched up to our competitors, and diversity was the distinguishing feature.

CMCP: Have you ever fired a firm for lack of diversity?

ROUNSAVILLE: Yes, it was during the early stages of my involvement with the California Minority Counsel Program. I respected the firm. They obviously had a right to run their firm the way they felt was appropriate. There was not an anti-diversity feeling. They said, "We feel that we're beyond these issues; we don't have to focus on diversity or gender. We're looking at meritocracy, and diversity will take care of itself." But it didn't, with all their good intentions. Therefore, we moved the relationship.

It was not something that was done very quickly or with any enthusiasm, but it was something that I felt had to be done. I didn't do it to make an example. I just felt that the people within my department had to realize that there ought to be consequences if firms did not measure up to what we felt was a very important core value of our profession.

UECKER: I haven't fired a firm for lack of diversity.

FONG: I've never fired a law firm for lack of diversity. But if a firm was seriously diversity-challenged, it's very likely we wouldn't have hired it in the first place.

YAMATE: I never fired a firm for lack of diversity. However, there are some firms I haven't hired because of that factor.

MODERATOR: How often does diversity come up in beauty contests?

HARATANI: This year, 100 percent of the time when I was attending a beauty contest. It makes good business sense because, especially as a trial lawyer, we have to understand how people's filters influence the way they evaluate the facts, and you need to argue your facts persuasively. The law is a given, hopefully. So understanding the cultural perceptions or the gender perceptions is very important. Smart businesses understand that. If you're going to try cases, you have to be able to communicate to that jury pool.

WENG: Just from my own experience, diversity was a factor in a pitch maybe three to five times in the last year. It's probably less often than that across my firm as a whole. Quite honestly, I wouldn't say diversity is coming up as often as I'd like. But it's coming up more and more.

COLOPY: Diversity is coming up frequently in beauty contests, particularly with the larger

companies that tend to have established programs in place either for diversity internally or for their outside counsel. An in-house counsel attended a minority bar association event where she heard a speaker discuss Farella's diversity program and all the things we're doing. She said to us, "Hey, you're doing really good things. We're looking for that in our outside lawyers."

GEENEN: The beauty contests that Foley attends may be for multiglobal or multinational corporations, but diversity is a topic 100 percent of the time regardless of the size of the organization seeking counsel. Foley is getting ahead of the curve by including our diversity initiatives or diversity statistics in every pitch we make, whether it's a beauty contest or not. Foley believes that part of the advantage it brings is the ability to provide a work force that is as diverse or hopefully more diverse than the companies to which we pitch.

In a beauty contest, Foley is competing for work with the cream of the crop. Foley wants to win work because our diversity program demonstrates its commitment to a culture of inclusion. Foley looks at diversity initiatives in a different way. We do not wait until somebody tells us it has to be on our bills. We have to be out in front of the clients saying: This is an important value to Foley as a law firm. Not only in our client relationships, but also in our vendor relationships. We are now going to vendors and saying get on this track; this is a community effort. It's not just about our legal staff. It's about a community that we need to create.

In some cases, we take our diversity partner Mark McSweeney with us on a client pitch. We want the client to know about Foley as an enterprise. We're saying, "Here we are in the community, here we are as a law firm, and here we are as a purchaser of services and goods." All of these core values are important to us, and that's why clients hire us, because we're going to match the client's core values. That's why Foley is acting more like a corporate citizen than just a law firm that's trying to get a certain rate for a billable hour. ■

To learn about how you can be involved in efforts to diversify the legal profession, please contact the **California Minority Counsel Program** (www.cmcp.org) at (415) 782-8990 or cmcp@sfbbar.org.

To participate in the **2005 Diversity Roundtable**, please contact Len Auletto, *California Lawyer* at (415) 296-2433 or len_auletto@dailyjournal.com.

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TANIA SHAH NARANG has been serving as the Executive Director of the California Minority Counsel Program (CMCP), a statewide membership organization whose mission is to promote diversity in California's legal profession and increase opportunities for attorneys of color. Prior to joining CMCP's staff, Ms. Narang practiced corporate securities law with Morrison & Foerster LLP in Palo Alto, CA. She is a graduate of UC Berkeley's Boalt Hall School of Law, and holds a bachelor's degree in Social Welfare from U.C. Berkeley. cmcp@sfbar.org

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Practising Law Institute (PLI) recently opened the PLI California Center, a modern high-tech training facility in downtown San Francisco. The Center is a primary location for over 75 PLI seminars annually. It also houses a fully stocked bookstore where lawyers and librarians are welcome to browse PLI publications, technology-based training products and Web Programs. Practising Law Institute is a non-profit continuing legal education organization founded in 1933. PLI is dedicated to providing the legal community and allied professionals with the most up-to-date, relevant information and techniques that are critical to the development of a professional, competitive edge. We have an especially large array of products and programs in the area of Intellectual Property. For more information, check out our website: www.pli.edu. We are proud to support the Roundtable 2004 series by hosting the panel discussion in our facility. info@pli.edu

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